Supreme Court, U.S.
FILED
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No. 97-7597

In The

Supreme Court of the United States

October Term, 1997

PATRICK KNOWLES,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Iowa

JOINT APPENDIX

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Petition for Certiorari Filed January 20, 1998
Certiorari Granted March 23, 1998

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RELEVANT DOCKET ENTRIES

Iowa District Court

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9/10/96	Notice of Appeal

Iowa Supreme Court

10/22/97	Decision

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

State of Iowa,
Plaintiff,
vs.
Patrick George Knowles,
Defendant

AG-CR002757

TRIAL INFORMATION

(Filed May 2, 1996)

The undersigned, as a prosecuting attorney for Plaintiff affiliated with the office of the County Attorney of Jasper County, Iowa, in the name and by the authority of the State of Iowa, hereby accuses the above-named Defendant, Patrick George Knowles, of the crime of Prohibited Acts by a Registrant, Keeping a Controlled Substance to wit: Marijuana in a motor vehicle, An aggravated misdemeanor in violation of Iowa Code Section 124.402(1)(e) in that on or about March 9, 1996 as shown in the Minutes of Evidence/Minutes of Testimony and/or other writings or document(s) attached thereto and presented herewith and by this reference fully incorporated herein and at a location in whole or in part within Jasper County, Iowa, the Defendant, Patrick George Knowles, did unlawfully and willfully commit the aforesaid crime substantially as therein disclosed.

A TRUE INFORMATION:

/s/ Christine E. Branstad
Christine E. Branstad,
Prosecuting Attorney
Room 301
Jasper County Courthouse
Newton, Iowa 50208
Telephone: 515/792-5010
FAX: 515/792-8287

List of Witnesses

Officer Ronald Cook and/or Officer Dale Springer and/or Brad Van Zee and/or Marcia Morton and/or Bruce P. Reeve and/or any and all other persons named or otherwise mentioned or identified in the attachment(s) hereinabove referenced and/or incorporated herein.

Copy to:

Jasper County Attorney

Patrick George Knowles
509 W. Marion, Box 864, Monroe, Iowa 50170

Maria Ruhtenberg, 601 Locust Street, Suite 1022, Des Moines, Iowa 50309, Attorney for Patrick Knowles

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

State of Iowa,

Plaintiff,

vs.

Patrick George Knowles,

Defendant

SR-CR002758

TRIAL INFORMATION

(Filed
May 2, 1996)

The undersigned, as a prosecuting attorney for Plaintiff affiliated with the office of the County Attorney of Jasper County, Iowa, in the name and by the authority of the State of Iowa, hereby accuses the above-named Defendant, Patrick George Knowles, of the crime of Possession of a schedule I Controlled Substance to wit: Marijuana, A serious misdemeanor in violation of Iowa Code Section 124.401(3) in that on or about March 9, 1996 as shown in the Minutes of Evidence/Minutes of Testimony and/or other writings or document(s) attached thereto and presented herewith and by this reference fully incorporated herein and at a location in whole or in part within Jasper County, Iowa, the Defendant, Patrick George Knowles, did unlawfully and willfully commit the aforesaid crime substantially as therein disclosed.

A TRUE INFORMATION:

/s/ Christine E. Branstad
Christine E. Branstd,
Prosecuting Attorney
Room 301
Jasper County Courthouse
Newton, Iowa 50208
Telephone: 515/792-5010
FAX: 515/792-8237

List of Witnesses

Officer Ronald Cook and/or Officer Dale Springer and/or Brad Van Zee and/or Marcia Morton and/or Bruce P. Reeve and/or any and all other persons named or otherwise mentioned or identified in the attachment(s) hereinabove referenced and/or incorporated herein.

Copy to:

Jasper County Attorney

Patrick George Knowles
509 W. Marion, Box 864, Monroe, Iowa 50170

Maria Ruhtenberg, 601 Locust Street, Suite 1022, Des Moines, Iowa 50309, Attorney for Patrick Knowles

IN THE IOWA DISTRICT COURT
FOR JASPER COUNTY

STATE OF IOWA,	)	**Criminal No. SRCR2758**
Plaintiff,	)	**SRCR2757**
	)	
vs.	)	**DEFENDANT'S MOTION**
	)	**TO SUPPRESS**
PATRICK KNOWLES,	)	
	)	
Defendant.	)	

The defendant, Patrick George Knowles, moves this Court to suppress evidence seized in violation of the United States Constitution and states the following in support:

1. On March 9, 1996, the defendant was stopped for speeding while driving in Newton, Iowa.

2. The officer issued the defendant a traffic citation for the speeding violation after determining that the defendant had a valid driver's license and no outstanding arrest warrants.

3. The officer then requested the defendant to exit the car, and the officer searched the defendant and his car.

4. During the search, the officer found what he believed to be marijuana under the driver's seat.

5. On May 2, 1996, a trial information was filed charging the defendant with Possession of a Schedule I Controlled Substance in violation of Iowa Code § 124.401(3) (Case No. CR 2758). On the same date,

another trial information was filed charging the defendant with Prohibited Acts by a Registrant, Keeping a Controlled Substance in violation of Iowa Code § 124.402(1)(3) (Case No. CR 2757). Both of these charges arose from the search of the defendant's car and the seizure of the marijuana.

6. The officer did not have probable cause to search the defendant's car, nor did he obtain a search warrant.

7. The officer stated in his report that the search was conducted "incident to citation."

8. No such exception to the warrant requirement exists under the Fourth Amendment to the Constitution.

9. Because the officer had no probable cause and no search warrant, and the search cannot otherwise be justified under the Fourth Amendment, the search of the car was unconstitutional, and the marijuana seized during the search must be suppressed.

10. In addition, when the officer issued the citation to the defendant, the officer had effectuated the purpose of the stop, and the further detention to search was without probable cause and unreasonable and therefore unconstitutional under the Fourth Amendment.

WHEREFORE, the defendant respectfully requests this Court suppress the marijuana unconstitutionally seized from the defendant's car.

PAUL ROSENBERG &
ASSOCIATES, P.C.
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Telephone (515) 245-3828
Fax (515) 247-2207

By: /s/ Maria Ruhtenberg
Maria Ruhtenberg
(PK0014905)
ATTORNEY FOR DEFENDANT

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA, Plaintiff, vs. PATRICK GEORGE KNOWLES, Defendant.	:	SR CR002757 & 2758 RESISTANCE TO DEFENDANT'S MOTION TO SUPPRESS

COMES NOW the State of Iowa, by and through the undersigned and resists the defendant's Motion to Suppress.

WHEREFORE, the State of Iowa prays the Court enter an Order overruling the defendant's Motion to Suppress.

THE STATE OF IOWA

By: /s/ Christine Branstad
Christine Branstad, Assistant
Jasper County Attorney
301 Courthouse Building
Newton, Iowa 50208
Tel: 1-515-792-5010

COPY:

Jasper County Attorney

Maria Ruhtenberg
Attorney for defendant

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA, Plaintiff, vs. PATRICK GEORGE KNOWLES, Defendant.	)))))))	CRIMINAL NOS. AGCR002757 SRCR002758 TRANSCRIPT OF PROCEEDINGS

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[3] PROCEEDINGS

THE COURT: Madam reporter, this is in Cause Nos. SRCR002758 and AGCR002757. Both of them are entitled State of Iowa vs. Patrick George Knowles. Mr. Knowles does appear personally for the purpose of a Motion to Suppress Evidence with his attorney, is it pronounced Maria Ruhtenberg?

MS. RUHTENBERG: That's right, Your Honor.

THE COURT: And the State of Iowa is represented by Assistant Jasper County Attorney, James Cleverley, Jr. Mr. Cleverley, are you ready to proceed?

MR. CLEVERLEY: Yes, Your Honor.

THE COURT: Ms. Ruhtenberg, are you ready to proceed?

MS. RUHTENBERG: Yes, Your Honor.

THE COURT: Will there be any evidence taken?

MR. CLEVERLEY: Yes, we would call Officer Cook.

THE COURT: And before you step up, Mr. Cook, will there be any witnesses on behalf of the defendant?

MS. RUHTENBERG: No, Your Honor. Officer Cook is the only one.

THE COURT: Officer Cook, why don't you come forward to be sworn.

[4] OFFICER RONALD J. COOK,

called as a witness by the State, being first duly sworn by the Court, was examined and testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. CLEVERLEY:

Q. Could you please state your name.

A. Ronald J. Cook.

Q. How are you employed?

A. I'm a police officer with the City of Newton.

Q. How long have you been a police officer for the City of Newton?

A. Since November 1992.

Q. And on March 9th of 1996, were you employed as a police officer?

A. Yes, sir, I was.

Q. And you're a certified peace officer?

A. Yes, sir, I am.

Q. You have the authority to write and issue citations; is that correct?

A. Yes, sir, I do.

Q. Now, on March 9th of 1996, did you have an occasion to come into contact with a Mr. Patrick George Knowles?

A. Yes, sir, I did.

[5] Q. And where was that contact first made?

A. Would have been in the – approximately the 300 block of East 12th Street South.

Q. And what brought your attention to either Mr. Knowles or to the vehicle he was in?

A. I was going northbound on East 12th Street South from South Fifth Avenue when I observed a vehicle approaching at a high rate of speed going southbound on East 12th.

Q. And did you make a determination of the speed of the vehicle at that time?

A. Yes, sir, I had a good Doppler tone on the radar and a reading of 43.

Q. Prior to activating the radar, had you made any independent observation of your own as to what the speed of that vehicle might be?

A. Just that it was going in excess of 25 miles an hour.

Q. And so the radar readout showed 43, and this is a 25 mile an hour speed zone; is that correct?

A. Yes, sir.

Q. What did you do then after getting the radar reading?

A. I waited until the vehicle passed me, and I pulled into a drive to turn around to catch up to the [6] vehicle.

Q. And at the time that you observed this vehicle and made the radar clocking of it, did you know who was operating that vehicle?

A. No, sir.

Q. When did you discover who the operator of that vehicle was?

A. After I stopped the vehicle, I approached the driver, and he was identified, and I recognized him as Patrick Knowles.

Q. What was the purpose of stopping that vehicle?

A. For speeding.

Q. And did you know Mr. Patrick Knowles after you had stopped the vehicle?

A. Yes, sir.

Q. And prior to stopping the vehicle, what were your intentions to do?

A. Write a speeding citation.

Q. Did you indeed write one?

A. Yes, sir, I did.

Q. And what was that for?

A. 43 miles an hour in a 25 mile an hour zone.

Q. As a law enforcement officer, do you have the authority to arrest people and place them in jail for such a charge?

[7] A. Yes, I do.

Q. And did you choose to do that on this evening?

A. No, I opted to cite in lieu of arrest.

Q. And do you have a copy of that ticket or citation?

A. I don't personally, no.

Q. But you did issue a uniform Iowa citation; is that correct?

A. Yes, sir, that's correct.

Q. And Mr. Patrick Knowles was the driver of that vehicle?

A. Yes, sir, he was.

Q. Was he the sole passenger of the vehicle?

A. Yes, sir, he was.

Q. And are you familiar with Mr. Knowles?

A. Yes, sir, I am.

Q. How are you familiar with Mr. Knowles?

A. Through the drug task force.

Q. And what do you know about Mr. Knowles or what – yeah, what do you know about Mr. Knowles?

A. I know that he's had problems with paraphernalia and controlled substances in the past.

Q. And did you say anything to Mr. Knowles regarding the search of his vehicle?

A. I just told him that after I issued him a [8] citation that I had a right to search his person and his vehicle.

Q. Did you ask to search his vehicle?

A. No, sir, I did not.

Q. Did you just go ahead and search it incident to the citation?

A. Yes, sir.

Q. And did Mr. Knowles object to the search of his vehicle?

A. No, I don't believe that he did.

Q. At any time did he consent to the search of his vehicle?

A. No, sir, he did not.

Q. After searching that vehicle, what did you discover?

A. Underneath the driver's seat, I found two cotton gloves. One of them contained a bone, or antler, pot pipe. The other one contained two plastic baggies; one of which was empty, and one of which contained a green plant material.

Q. Why was it that you searched this vehicle?

A. Because I'd issued a citation.

Q. Was it also based on the fact of your prior knowledge of the type of behavior or criminal activity that Mr. Knowles had been involved in?

[9] A. Yes, sir.

Q. And all those events occurred in Jasper County, Iowa?

A. Yes, sir, they did.

Q. Is Mr. Knowles present here today?

A. Yes, sir, he's wearing a white T-shirt.

MR. CLEVERLEY: I have nothing further.

THE COURT: Cross-examination.

MS. RUHTENBERG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. RUHTENBERG:

Q. Officer Cook, after you stopped Mr. Knowles for speeding, did you run a check on his license?

A. Yes, ma'am, I did.

Q. Okay. Did you obtain a license and registration from Mr. Knowles?

A. I obtained his license. I don't believe I took his registration.

Q. And after you took his license, what did you do?

A. I went back to my vehicle to start writing out a summons, and I also did the check through the computer system on his driver's license.

Q. What did you discover through that check on his driver's license?

A. That he had a valid driver's license, and he had [10] no outstanding warrants – arrest warrants.

Q. What did you do after that?

A. I issued – I wrote up the citation and waited for Officer Springer to come to my location to assist me, then went back up to Mr. Knowles's vehicle, issued him the citation, and explained to him that I had a right to search him and his vehicle incident to the citation.

Q. Did you have any other suspicion that he was at that moment involved in any drug activity?

A. Other than my past knowledge of Mr. Knowles, no.

Q. Anything you observed lead you to believe or give you probable cause to believe that he was involved in criminal activity?

A. Not on this date, no.

Q. Was it your feeling that your knowledge of his past problems or your past knowledge of Mr. Knowles, did that give you probable cause to search his vehicle?

A. No, the speeding gave me probable cause to search the vehicle.

Q. And that's what you were thinking at the time of the stop?

A. Yes, ma'am.

Q. Did you physically hand the citation to Mr. Knowles prior to stopping him – I mean, prior to asking him to exit the car?

[11] A. I don't know if I handed it to him before he got out of the car or after he was standing outside the car.

Q. Was the search of his vehicle and of his person conducted after he received the copy of the citation?

A. Yes, ma'am.

Q. You did stop him for speeding?

A. Yes, ma'am.

Q. At that point when you issue a citation to a person after speeding, have you effectuated the purpose of your stop?

A. Have I finished my stop?

Q. Yes.

A. Yes, ma'am.

Q. Did you need, at that point, to obtain any further evidence of speeding?

A. Not of speeding, no.

Q. It was your understanding that simply because you had issued him a citation that that gave you the right – without any further probable cause gave you the right to search him and his vehicle?

A. Yes, ma'am.

MS. RUHTENBERG: Okay. I don't have any further questions. Thanks.

THE COURT: Redirect.

MR. CLEVERLEY: Nothing, thank you.

* * *

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA,	:	Nos. AGCR2757, SRCR2758
Plaintiff,	:	
vs.	:	RULING ON MOTION TO SUPPRESS
PATRICK GEORGE KNOWLES,	:	
Defendant.	:	

This matter came on for hearing before the Court on the Defendant's motion to suppress evidence. The Defendant appeared personally with his attorney, Maria Ruhtenberg. The State was represented by Assistant Jasper County Attorney, James Cleverley.

Testimony was taken from one witness, Newton Police Officer Ron Cook, who issued a citation in lieu of arrest to the Defendant for speeding. The facts are undisputed. Officer Cook stopped the Defendant's motor vehicle early in the evening of March 9, 1996. After issuing the speeding citation, Officer Cook searched the Defendant's vehicle incident to the citation and found a quantity of marijuana in the vehicle.

The sole purpose of the stop was to issue a speeding citation. After ascertaining the identity of the Defendant, who was the sole occupant of the motor vehicle, Officer Cook stated that he recognized the Defendant as having prior involvement with possession of controlled substances and drug paraphernalia. However, Officer Cook also testified that he observed nothing in the course of the stop that make [sic] him suspicious of the Defendant or his activities. Therefore, both parties agree that justification

of the search in question must succeed or fail solely as a search incident to the issuance of the speeding citation.

The Defendant concedes that the Iowa Supreme Court has on two occasions ruled that a search incident to a citation is tantamount to a search incident to an arrest. *State v. Cook*, 530 N.W.2d 728 (Iowa 1995); *State v. Meyer*, 543 N.W.2d 876 (Iowa 1996). In both cases the high court reasoned that because the officer could have arrested the defendant under Iowa law instead of issuing a citation and could have conducted a search incident to such arrest, then the officer could search incident to a citation.

The Defendant argues that the supreme court did not consider in either *Cook* or *Meyer* the constitutional implications of Iowa Code §805.1(4) (1995), which states that "[t]he issuance of a citation in lieu of arrest . . . does not affected the officer's authority to conduct an otherwise lawful search." However, in both of those cases, the court stated that its review was de novo because constitutional issues were at stake, indicating that the supreme court was well aware of the tension created by the statute vis-a-vis the fourth amendment.

This Court, having no basis on which to grant the Defendant's motion to suppress, DENIES the same.

/s/ Carol Greta
Judge, 5th Judicial District

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA,	:	
	:	Nos. AGCR 2757
Plaintiff,	:	AGCR 2758
vs.	:	
	:	
PATRICK KNOWLES,	:	Transcript of Evidence
	:	
Defendant.	:	

* * *

[22] PROCEEDINGS

(The hearing commenced at 1:28 p.m. on July 10, 1996.)

THE COURT: Patrick George Knowles. Is this pretrial?

MS. RUHTENBERG: Yes, Your Honor. We're going to stipulate to the minutes and stipulate trial and have sentencing set for later.

THE COURT: Okay. Miss Ruhtenberg, my understanding is you're allowing the Court to make a finding at this time?

MS. RUHTENBERG: Yes, Your Honor.

THE COURT: In both cases?

MS. RUHTENBERG: Yes.

THE COURT: One is prohibited acts by registrant. I take it that's to have marijuana in a – maijuana [sic] in a vehicle registered to the owner, and the other is possession; right?

MS. RUHTENBERG: Yes, Your Honor.

THE COURT: Does your client understand what we're doing?

MS. RUHTENBERG: Yes.

THE COURT: He's waiving his right to trial and all of that?

MS. RUHTENBERG: Yes.

[23] THE COURT: To confront the witnesses and those things?

MS. RUHTENBERG: Yes.

THE COURT: You've told him aobut [sic] all of that?

MS. RUHTENBERG: Yes.

THE COURT: Okay. The Court makes a finding of guilty as charged based upon – I can use the whole record; right?

MS. RUHTENBERG: Yes.

THE COURT: Meaning everything that's docketed including the officer's preliminary report?

MS. RUHTENBERG: Right.

THE COURT: Okay. Court makes a finding of guilty as charged. Sentencing is set for when – Do you want me to be the sentencing judge, or does it make any difference – because on the 30th, which would be your – the 31st I will be gone.

MS. BRANSTAD: Your Honor, Mr. Knowles is waiting sentencing on a felony charge. We'd ask that sentencing be set on that same date.

THE COURT: What date is that?

MS. BRANSTAD: It's the 24th –

MS. RUHTENBERG: Well, I have a plea date on the 24th.

MS. BRANSTAD: The 24th would be sentencing.

[24] MS. RUHTENBERG: I thought it was the 24th.

THE COURT: He's pleading on a felony?

MS. RUHTENBERG: Yes.

THE COURT: They're going to have to do a presentence investigation. We're going way into six weeks after that, aren't we, at least? It's going to take six weeks, isn't is [sic], Miss Branstad?

MS. BRANSTAD: Yes, it does. Probably looking at September.

THE COURT: Give me a date.

MS. BRANSTAD: Your Honor, we'd ask that this be set for the 29th at which time it can be continued to the same time as the other case for – sentencing can be done at that time.

MS. RUHTENBERG: Defendant's in agreement with that.

THE COURT: Sentencing for now set – You're talking about the 29th of this month?

MS. BRANSTAD: Yes, Your Honor. Set for 9:30 if that would be agreeable with the Court.

THE COURT: I think she said that's all right, did you not, Miss Ruhtenberg?

MS. RUHTENBERG: That's fine, Your Honor.

THE COURT: Is there anything else for this file or – or either one of those files?

[25] MS. RUHTENBERG: No, Your Honor.

(The hearing was complete at 1:31 p.m.)

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA,	:	AG CR002757
Plaintiff,	:	JUDGMENT ENTRY
vs.	:	
PATRICK GEORGE KNOWLES,	:	(Filed Sep. 10, 1996)
Defendant.	:	

BE IT REMEMBERED that on the 9th day of September, 1996, the State appeared in open Court by James W. Cleverley, Assistant Jasper County Attorney, and the defendant appeared in person and with his Attorney Maria Ruhtenberg, for sentencing.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendant is guilty of the offense of prohibited acts by a registratnt [sic], keeping a controlled substance, to wit: marijuana in a motor vehicle in violation of Section 124.401(1)(e), Code of Iowa, and that he/she is hereby sentenced to a fine in the amount of $500.00 plus the 30% surcharge, together with interest as by law provided, and ninety (90) days in the Jasper County Jail; that said sentence shall run concurrent with SR CR002758, but not to commence until after the defendant has served his sentence in FE CR002697.

Any appearance bond heretofore posted by the defendant shall be released and any sureties thereon exonerated.

Costs of this action are assessed against the defendant, including restitution of his Court appointed attorney fees.

Bond on appeal is hereby set at $500.00.

/s/ Richard Morr
Judge, Fifth Judicial District
of Iowa

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA,	:	SR CR002758
Plaintiff,	:	JUDGMENT ENTRY
vs.	:	
PATRICK GEORGE KNOWLES,	:	(Filed Sep. 10, 1996)
Defendant.	:	

BE IT REMEMBERED that on the 9th day of September, 1996, the State appeared in open Court by James W. Cleverley, Assistant Jasper County Attorney, and the defendant appeared in person and with his Attorney Maria Ruhtenberg, for sentencing.

IT IS THEREFORE ORDERED AND ADJUDGED that the defendant is guilty of the offense of possession of a Schedule I Controlled Substance, to wit: marijuana in violation of Section 124.401(3), Code of Iowa, and that he/she is hereby sentenced to a fine in the amount of $250.00 plus the 30% surcharge, together with interest as by law provided, and ninety (90) days in the Jasper County Jail; that said sentence shall run concurrent with SR CR002757, but not to commence until after the defendant has served his sentence in FE CR002697.

Any appearance bond heretofore posted by the defendant shall be released and any sureties thereon exonerated.

Costs of this action are assessed against the defendant, including restitution of his Court appointed attorney fees.

Bond on appeal is hereby set at $500.00.

/s/ Richard Morr
Judge, Fifth Judicial District
of Iowa

IN THE SUPREME COURT OF IOWA

No. 235/96-1584

Filed October 22, 1997

STATE OF IOWA,

Appellee,

vs.

PATRICK KNOWLES,

Appellant.

Appeal from the Iowa District Court for Jasper County, Carol Greta and John P. Crouch, District Associate Judges.

Defendant convicted of possession of a controlled substance and keeping a controlled substance in an automobile appeals, challenging evidentiary rulings allowing evidence of marijuana obtained by a search of his person and automobile incident to the issuance of a traffic citation. **AFFIRMED**.

Maria Ruhtenberg of Paul Rosenberg & Associates, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Steve Johnson, County Attorney, and James Cleverley, Jr., Assistant County Attorney, for appellee.

Considered en banc.

CARTER, Justice.

Defendant, Patrick Knowles, was convicted of possession of a Schedule I controlled substance (marijuana) in violation of Iowa Code section 124.401(3) (1995) and keeping a controlled substance in an automobile in violation of Iowa Code section 124.402(1)(e). He appeals and challenges evidentiary rulings that allowed evidence of marijuana that had been obtained by a search of his person and automobile incident to the issuance of a traffic citation. Defendant divides his grounds for reversal into four contentions: (1) the lack of probable cause to search under the Fourth Amendment to the federal constitution, (2) the invalidity of a purported statutory grant of authority to search based on the issuance of a traffic citation, (3) the invalidity of a purported authorization for custodial arrest for a speeding violation under the seizure restrictions of the Fourth Amendment to the federal constitution, and (4) that it was unreasonable to detain the defendant after the issuance of the citation had been completed. Because we find the controlling issues of law have been determined adversely to defendant in *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), we affirm the judgment of the district court.

We need not consider defendant's first contention as existing separate and distinct from the second. The State does not contend that there was probable cause to search under the warrant standards of the Fourth Amendment. Defendant was stopped by police for driving at an excessive speed. There were no circumstances indicating that evidence of crime existed on his person or in his automobile. The officer's election to search his person and his car was based solely on the perceived authority to search

conferred by Iowa Code section 805.1(4). We thus proceed to the consideration of defendant's contention that this statute is unconstitutional.

We have consistently interpreted section 805.1(4) as providing authority to search when a traffic violation has occurred that would constitute grounds for an arrest. *State v. Meyer,* 543 N.W.2d 876, 879 (Iowa 1996); *State v. Becker,* 458 N.W.2d 604, 607 (Iowa 1990). Defendant does not contest the fact that he was speeding or that there was a statutory basis for arrest. *See* Iowa Code § 804.7. In *Doran* we upheld the authority to search conferred by section 805.1(4) in the face of challenges based on the Fourth Amendment and article I, section 8 of the Iowa Constitution.

Defendant urges us to reconsider our *Doran* holding. He asserts that, because the "search incident to an arrest" exception to the Fourth Amendment is the only constitutional predicate on which the State seeks to support the authority to search his person and automobile, there must have in fact been a custodial arrest to satisfy the limitations on searches imposed by the Fourth Amendment. He urges that our holding in *Doran* that the constitutional basis for the "search incident to an arrest" exception is satisfied by the presence of grounds for arrest rather than the making of a custodial arrest is misguided. We disagree. The suggestion that the constitutional basis for the "search incident to an arrest" exception is an actual arrest is belied by those decisions that hold that the timing of the arrest need not precede the search. *See State v. Peterson,* 515 N.W.2d 23, 25 (Iowa 1994); *State v. Beatty,* 305 N.W.2d 496, 498 (Iowa 1981). And, when the search produces an independent ground for an arrest on a more

serious charge, the foregoing of an arrest for the traffic violation does not defeat the authority to search. *See People v. Rossi,* 102 Ill. App. 3d 1069, 1073, 430 N.E.2d 233, 236 (1981).

We are satisfied that our decision in *Doran* properly identified the public policy reasons that support the "search incident to an arrest" exception when grounds for a legal arrest are present. When an officer has a legal basis to make a custodial arrest and thereby acquires grounds for searching a suspect's person or automobile in the absence of probable cause, an election by the officer to pursue a lesser intrusion, such as issuing a citation, may be conditioned on certain aspects of detention and search that are conducive to the officer's safety. Based on those considerations, the legislature's grant of the authority to search provided in section 805.1(4) does not offend against the Fourth Amendment.

Defendant's third point, which suggests that the statutory authorization for a custodial arrest on a speeding charge is an unlawful authorization of an illegal seizure of the person under the Fourth Amendment, was not raised in the motion to suppress before the district court and thus may not be considered by us. His argument that he was unreasonably detained following the issuance of the citation must be rejected because the further detention was for purposes of making a search that has now been determined to be lawful. We have considered all issues presented and conclude that the judgment of the district court should be affirmed.

AFFIRMED.

All justices concur except Neuman, Lavorato, Snell, and Ternus, JJ., who dissent.

NEUMAN, Justice (dissenting).

For the reasons expressed in my dissent to *State v. Doran*, 563 N.W.2d 620, 623 (Iowa 1997) (Neuman, J., dissenting), I cannot join the majority opinion. The constitutional reasonableness of a statute that purports to authorize a search that is neither pursuant to warrant, incident to custodial arrest, or based on probable cause simply cannot be decided in the abstract. The validity of such a search is "pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." *Sibron v. New York*, 392 U.S. 40, 59, 88 S. Ct. 1889, 1901, 20 L. Ed. 2d 917, 932 (1968). The United States Supreme Court has never departed from this principle and neither, I respectfully suggest, should we.

Supreme Court of the United States

No. 97-7597

Patrick Knowles,

Petitioner

v.

Iowa

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of Iowa.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

March 23, 1998